STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	)	
	)	Docket No. 01-0539
Implementation of Section 13-712(g) of the Public Utilities Act	)	

VERIZON NORTH INC.'S AND VERIZON SOUTH INC.'S REPLIES TO COMMENTS FILED BY TDS METROCOM, MCLEODUSA AND SBC ILLINOIS

Verizon North Inc. and Verizon South Inc. (collectively "Verizon") by their attorneys, pursuant to Administrative Notice, submit to the Illinois Commerce Commission (the "ICC" or "Commission") these Reply Comments on Comments filed by TDS Metrocom , LLC ("TDS"), McLeodUSA Telecommunications Services, Inc.("McLeod"), and SBC Illinois ("SBC") on the Commission's First Notice Order, in state Docket No. 01-0539 (Wholesale Service Quality Rule), dated January 7, 2004.

I.
Introduction

The Commission initiated this proceeding on August 8, 2001, in an effort to implement Section 13-712(g) of the Public Utilities Act. Specifically, Section 13-712(g) requires that: "[t]he Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules." (220 ILCS 5/13-712(g)).

After a series of workshops, spanning the better part of a year, hearings were held in July and August, 2002. The Administrative Law Judge's Proposed Order was issued on April 11, 2003, and the parties fully briefed the Proposed Order on May 27, and June 27, respectively.

On January 7, 2004, after having considered the entire record, the Commission issued its First Notice Order. Although the comment period for the contested issues in this case had come and

gone, three parties elected to re-argue their cases after the First Notice Order was issued. Notwithstanding the procedural inappropriateness of the Parties actions, the following are Verizon's reply comments.

II.
Reply Comments to TDS and McLeod

TDS and Mcleod take issue with the provisions in the Proposed Rule pertaining to the Level 1 Wholesale Service Quality Plans ("WSQP") submissions to the Commission. Specifically, these parties object to the following: (1) that Level 1 Carriers shall submit their initial plans to the Manager of the Telecommunications Division of the Commission (Section 731.205(a)); (2) that every three years after submission of its initial plan, Level 1 Carriers shall submit their plans to the Manager of the Telecommunications Division; (3) that any proposed amendments to the Level 1 Carrier's WSQP are also to be submitted to the Manager of the Telecommunications Division; and (4) that Level 1 Carriers must give 45 days prior notice of any proposed change or modification to its plan to the Manager of the telecommunications Division and to "all affected carriers," and must post the proposed change or modification on the Level 1 Carrier's website. (Section 731.205(d)). In making their objections, TDS and McLeod each assert that "Part 731 should establish a more formal process for the submission and approval of a Level 1 Carrier's initial WSQP, the triennial re-submission of the WSQP, and any intervening proposed changes to the WSQP." (Mcleod Comments, p. 2; TDS Comments, p. 2) Neither party, however, provides any basis for its request for more formality.

TDS and McLeod are mistaken for three reasons. First, their own briefs acknowledge that, under the rule, a formal process does exist for parties to raise objections to the plans. As both Mcleod and TDS acknowledge, under Proposed Section 731.205(c), the Commission may initiate a proceeding to investigate a Level 1 Carrier's WSQP and Section 731.205(d) provides that any

carrier seeking to contest a proposed change to a Level 1 Carrier's WSQP can file a complaint with the Commission within 30 days after the date of service of the Level 1 Carrier's notice of the proposed change. Accordingly, the Proposed Rule provides ample opportunity for a party with an objection to be heard before the Commission. Indeed, the Commission rejected this same argument during the hearing phase of this proceeding, stating that the provisions that allow parties and the Commission to raise objections to the plans "address and resolve McLeod's arguments on this issue." Neither McLeod nor TDS provide any basis in their respective comments to refute the Commission's conclusion.

Second, the Proposed Rule is more reasonable than the proposals of TDS and McLeod because it only requires a formal filing and proceeding where one is necessary. With no party taking issue with Verizon's current wholesale service quality plan, it makes little sense for the Commission to mandate a process that will lead to more pleadings and hearings. Under the Proposed Rule, the hearing process occurs only if Staff or another carrier raises an issue.[1] With few, if any, complaints expected, this process is the more reasonable one.

Finally, the TDS and Mcleod's proposals are overly burdensome. Each would require a filing and proceeding each time a plan is amended. Even a trivial modification to a plan triggers their proposal. Simply put, TDS and McLeod are proposing an unnecessarily complicated and burdensome process. Nowhere in their respective comments do they provide any justification for their proposal. With ample provisions in the Proposed Rule for parties to raise objections, the proposed amendments to the rule of TDS and McLeod are unnecessary and should be rejected.

[1] It should be noted that § 731.205(e) of the Proposed Rule places the burden of proof to establish the justness and reasonableness of the changes or modifications on the Level 1 carriers.

III.
Reply Comments to SBC

A. The Inclusion Of Special Access Services Should Not Be Mandated In The Service Quality Plans Of Level 1 Carriers.

SBC objects to the inclusion of Special Access Services in this Rule. Verizon concurs that measures and penalties for special Access Services should be excluded from the rule. However, SBC misstates the Rule's requirement in stating that: "Level 1 Carriers submit a "Wholesale Service Quality Plan" **tariff** in June 2004 and every three years thereafter.[2]"(Emphasis Added). The requirement to tariff the Carrier's Wholesale Service Quality Plan was removed in the Commission's First Notice Order. (See Admin. Rule Part 731.205). Except for this initial misstatement, SBC presents compelling arguments as to why Special Access Services should not be included in this Rule.[3]

Specifically, SBC notes that Section 13-712 of the Public Utility Act is titled "Basic local exchange service quality; customer credits." This statutory limitation is not somehow changed by the First Notice Order's perceived "need" to address special access services, which are not basic local exchange services. The First Notice Order's statutory interpretation of this section violates the most basic of established statutory construction principles: in determining the legislative intent with respect to a particular statute, the statute must be viewed as a whole. *Collins v. Retirement Board of Policemen's Annuity and Benefit Fund—City of Chicago*, 779 N.E.2d 253, (Ill.App. 1st Dist.); *Reece v. Board of Education of the City of Chicago*, 328 Ill.App. 3d 773, 778 (1st Dist. 2002). A particular subsection of a statute cannot be viewed in isolation. (*Id.*) However, this is the approach adopted in the First Notice Order.

[2] See Comments of SBC Illinois, at Page 4.
[3] See Comments of SBC Illinois, Generally and at Pages 4- 8.

In taking this approach, the First Notice Order ignored numerous factors that clearly demonstrate the General Assembly's intent for Section 13-712(g) to apply only to basic local exchange services:

- Section 13-712 is entitled "Basic local exchange service quality; customer credits;"
- Subsection 13-712(a) explicitly sets forth the General Assembly's intent with respect to ***all*** of Section 13-712 "that every telecommunications carrier meet minimum service quality standards in ***providing basic local exchange service*** on a non-discriminatory basis to all classes of customers…;"
- Subsections 13-712 (b) - (f) all relate only to the provision of basic local exchange service quality;
- The Commission's Initiating Order already contains the correct interpretation of Subsection 13-712(g)—namely that it *"**deals with basic local exchange service quality**;"* and
- Subsection 13-712(g) does not mention special access services, which, as no party disputes, are ***not*** a basic local exchange services.

In other words, when read as a whole, the plain language of the Act dictates that Subsection 13-712(g) applies only to basic local exchange services.

SBC also is correct that as a matter of policy, the record overwhelming demonstrates that there is no need to address special access services in the instant rulemaking. Indeed, with respect to Verizon, the record demonstrates that Verizon's special access performance is outstanding. (*See*, Holland Reb., Verizon Ex. 6.0, pp. 3-13) As SBC states in its Response, its performance has improved significantly. As such, to address alleged problems were unsupported in the record is poor regulatory policy and contrary to the Commission's legislative mandate to decrease carriers' regulatory burdens to the extent possible.

Finally, SBC also correctly notes, the intent of the General Assembly, "that every telecommunications carrier meet minimum service quality standards in providing basic local exchange service on a non-discriminatory basis to all classes of customers," yet the establishment of

a "special category of Level 1" imposes special access rules that apply to only two carriers, SBC and Verizon. SBC is correct on these issues and its arguments comport with Verizon's testimony and briefs[4]. The First Notice Order and Proposed Rule should be modified accordingly.

B. The Commission's Proposed Standards for Level 4 Carriers Are Not Sufficient To Correct Their Inadequate Performance Or To Protect Consumer Choice.

SBC notes that:

> The proposed Rule here properly imposes reasonable performance standards on Level 4 carriers for three wholesale functions that they perform: provision of customer service records ("CRSs"), return of unbundled loops, and loss notification. However, it fails to back those standards with any meaningful enforcement credits or reporting mechanism, which renders its standards meaningless. Further the Proposed Rule does not address number portability at all. (See Comments of SBC Illinois at Page 9).

Verizon concurs[5]. Section 13-712(g) requires that the Commission must also establish remedies to ensure enforcement of it wholesale rules. By setting Level 4 remedies at one dollar per occurrence, the rule falls far short of "ensuring enforcement". SBC's proposed remedy level of 25 dollars per occurrence would be the minimum necessary to comply with the statute.

Given that Level 4 Carriers are currently providing components of telecommunication service, and those service levels are at issue here, there is no reason or justification for these carriers to be treated any differently than Level 2 Carriers. Section 731.820 states that if a Level 4 Carrier agrees to provide wholesale service, or is obligated to provide such service, the Level 4 carrier would be reclassified to a Level 2 Carrier. As such, the Level 4 Carrier classification should be eliminated and those carriers reclassified to Level 2 Carriers.

[4] See Direct Testimony of Verizon witness, Faye Raynor, at Page 10. See Rebuttal Testimony of Verizon witness, Jerry Holland, Generally. See Initial Brief of Verizon North Inc. and Verizon South Inc. at Pages 5 – 12. See Reply Brief of Verizon North Inc. and Verizon South Inc. at Pages 16 – 28.

[5] See Direct Testimony of Louis Agro at Page 15. See Initial Brief of Verizon North Inc. and Verizon South Inc. at Page 25. See Reply Brief of Verizon North inc. and Verizon South Inc. at Page 29.

IV.
Conclusion

For the forgoing reasons, Verizon respectfully requests that the Proposed Rule be amended as provided herein and in Verizon's Initial Comments.

Dated: March 26, 2004

Respectfully submitted,

VERIZON NORTH INC. AND
VERIZON SOUTH INC.

By: _____
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CERTIFICATE OF SERVICE

I, Michael Guerra, hereby certify that I served a copy of Verizon North Inc.'s and Verizon South Inc.'s Replies to Comments Filed by TDS Metrocom, McleodUSA and SBC Illinois upon the service list in Docket No. 01-0539 by email on March 26, 2004.

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Michael Guerra